

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
THE DENIAL OF A VARIANCE PERMIT

DEAN A. AND DAGNE F. JOHNSON  
and MASON COUNTY,

Appellants,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondent.

SHB No. 79-52

FINAL FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal from the disapproval by the Department of Ecology of a variance permit issued by Mason County to Dean and Dagne Johnson, came before the Shorelines Hearings Board, Nat Washington, Chairman, Rodney Kerslake, James S. Williams, and David Akana (presiding), at a hearing in Lacey on September 3, 1980..

Appellant was represented by his attorney, Paul V. Ricke; respondent was represented by Robert V. Jensen, assistant attorney general. Court reporter Janice E. Driver recorded the proceedings.

1 Exhibits were admitted; witnesses were sworn and testified.  
2 Counsel made arguments.

3 Having considered the testimony, having examined the exhibits, and  
4 having considered the contentions of the parties, the Board makes these

5 FINDINGS OF FACT

6 I

7 Appellants Johnson are the owners of waterfront lot 3 in Kohl's  
8 Cove Addition located about one mile west from Twanoh State Park in  
9 Mason County. The 60 foot by 105 foot deep lot is situated next to  
10 Hood Canal, a shoreline of statewide significance.

11 II

12 In 1976, the prior owner of the lot constructed a concrete  
13 bulkhead on the 60 foot waterfront face of the property. In 1977,  
14 appellants purchased the lot and hired a builder to propose plans for  
15 a single family residence. At that time appellant's lot and three  
16 other waterfront lots (Nos. 1, 2 and 4) were undeveloped. In January  
17 1978, appellants obtained a 9-foot variance from the 15 foot minimum  
18 setback requirement of the Mason County Master Program (SMP) for the  
19 purpose of constructing a residence. In its approval of the 9-foot  
20 variance, respondent established a common building line for lots 1, 2,  
21 3 and 4 of Kohl's Cove Addition. Because the bulkhead on lots 3 and 4  
22 were located 11 feet landward of lots 1 and 2 lying to the west and  
23 lot 5 lying to the east, lots 3 and 4 would be allowed to build up to  
24 6 feet from the bulkhead; lot 2 would be required to adhere to the 15  
25 foot setback thereby creating a common building line.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

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III

After the 1978 variance was approved, appellants constructed their recreational residence. An 8 foot 7 inch wide deck at approximately ground level was constructed as an integral part of the house. Thirty one inches of the deck extend beyond the bulkhead, over water. On June 21, 1978, Mason County notified appellants that a deck constructed beyond the bulkhead face and over the waters of Hood Canal was not a part of the approval in the 1978 variance permit. Appellants were informed by Mason County that the deck would have to be removed. Appellants promptly attempted to obtain approval for their deck as built from the U.S. Corps of Engineers and Mason County. A shoreline variance application was submitted to Mason County. Denial of the application was recommended by both the Mason Regional Planning Council Staff and the Mason County Shoreline Advisory Board. The recommendations were rejected by the County Commissioners who approved the variance. The Department of Ecology (DOE) staff recommended denial of the variance for the portion of the deck encroaching over the water. On October 26, 1979, the DOE denied the variance stating that the hardship was of the applicants own doing, that the deck exceeded the minimum necessary to provide relief, and that an overwater deck could not be allowed unless the construction of a deck would otherwise be precluded.

IV

The 1978 variance permit and materials submitted do not indicate that a deck was planned or allowed. Mason County and DOE did not

1 approve a deck in the original permit nor did they in any way approve  
2 the deck which was constructed.

3 V

4 Appellants presently have a reasonable use of their property.  
5 They have constructed a residence on it and would be able to continue  
6 its use as a residence whether or not a deck was allowed to extend  
7 beyond the bulkhead, over water. A prohibition of the over-water  
8 portion of the deck would not preclude a reasonable use of the  
9 property or preclude what is common to other recreational waterfront  
10 homes in the neighborhood.

11 A deck on the land is not placed into issue by the evidence; the  
12 DOE would not appear to object to this. That portion of the deck  
13 constructed over water is strenuously objected to by DOE.

14 VI

15 The approved Mason County Shoreline Master Program (SMP) provision  
16 from which a variance is sought is section .16.080(2):

17 Setbacks - the minimum setback for buildings shall be  
18 15 feet from the line of ordinary high water,  
19 provided that structures shall not extend beyond the  
20 common line of neighboring structures, and new  
21 construction shall not substantially reduce the view  
22 of neighboring structures.

23 Section .28.020, relating to variances, requires that a property  
24 owner must show that if he complies with the SMP provisions, he cannot  
25 make any reasonable use of his property. The remainder of the  
26 variance criteria are not substantially different from WAC 173-14-150.

VII

If retained as built, the deck would not significantly affect views, present a hazard to navigation or the public use of the shoreline, nor be aesthetically unpleasing.

If retained as built, the deck would encourage adjacent property to build similar projects and set a precedent in the area for over-water construction.

VII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Appellants were shown to have a reasonable use of their property. (See Section .28.020.) Therefore, the portion of their requested variance at issue, i.e., the deck built over water, should not have been granted by the county.

II

Appellants did not show that the requirements of the SMP precluded a reasonable permitted use of their property. (See WAC 173-14-150(3)(a).) On the other hand, respondent showed that appellants would have a reasonable use of their property even though the over water portion of their deck was removed.

III

The hardship to appellants is not related to the property and its unique conditions, or from the SMP, but results from appellants' own

1 actions. (See WAC 171-14-150(3)(b).) Appellants' house was situated  
2 at a location of their own choosing and their deck was a later  
3 addition not earlier disclosed in the permits or plans.

#### 4 IV

5 The over water deck would not be compatible with other permitted  
6 activities in the area (WAC 173-14-150(3)(c)) because it would be the  
7 only deck built over water along the setback line established in  
8 1978. Similarly, the granting of a variance would also grant a  
9 special privilege to appellants not enjoyed by other properties in the  
10 area (WAC 173-14-150(3)(d)). It would undermine the respondent's  
11 attempt to ensure orderly, coordinated development of the shoreline.  
12 Thus, the precedent set would be detrimental to the public interest,  
13 and if continued for similar actions along the shoreline, would result  
14 in an undesirable cumulative impact in the area. (See WAC  
15 173-14-150(3)(f) and (4).)

#### 16 V

17 Appellants have shown that certain physical disabilities require  
18 that their home be constructed in a manner that would accommodate  
19 them. But even given the disabilities, we are not persuaded that a  
20 six foot deck, which it appears would be allowed by DOE, would be  
21 inadequate. We are not persuaded that a deck constructed over water  
22 is necessary to provide the relief sought.

#### 23 VI

24 The Department of Ecology's action should be affirmed but remanded  
25 for action on that portion of the deck which would be allowed.

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

VII

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The Department of Ecology action is affirmed. The matter is remanded for further proceedings referred to in our Findings and Conclusions.

DONE this 24<sup>th</sup> day of September, 1980.

SHORELINES HEARINGS BOARD

  
NAE W. WASHINGTON, Chairman

  
DAVID AKANA, Member

  
RODNEY M. KERSLAKE, Member

  
JAMES S. WILLIAMS, Member

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